

Message Text

LIMITED OFFICIAL USE

PAGE 01 STATE 153499

72

ORIGIN COME-00

INFO OCT-01 NEA-05 IO-03 ADP-00 AGR-03 CEA-01 CIAE-00

DODE-00 EB-05 FRB-01 H-01 INR-10 INT-01 L-03 LAB-02

NSAE-00 NSC-04 PA-02 RSC-01 AID-07 CIEP-01 SS-15

STR-04 TAR-01 TRSE-00 USIA-12 PRS-01 OMB-01 AF-05

ARA-10 EA-07 EUR-06 /113 R

66650

DRAFTED BY MFELDMAN DSCHLECHTY COMM OTP BIC TND

APPROVED BY STATE EB OT OMAHONY

COMM OTP BIC FEABBUHL COMM OTP GCP RKLEIN

STATE CBLACK TREAS CLEIGHT STR DWHITNACK USDA JMONTEL

STATE INDIAN DESK DBORN STATE L E DBURNS

----- 003682

R 032150Z AUG 73

FM SECSTATE WASHDC

TO USMISSION GENEVA

AMEMBASSY NEW DELHI

LIMITED OFFICIAL USE STATE 153499

EO 11652 NA

TAGS ETRD GATT IN

SUBJ INDIAN TRADE POLICY; AUXILIARY DUTIES,

ARTICLE 28 NEGOTIATIONS, EMBARGOES/GATT BOP

CONSULTATIONS

REF A. NEW DELHI 8174; B. GENEVA 3234; C. NEW DELHI 7427;

D. STATE 122730

1. SINCE INDIA AGREES MARCH 16 GATT WAIVER DOES NOT

COVER AUXILIARY DUTIES AND DOES NOT WISH INCLUDE AUXIL-

IARY DUTIES IN GATT ARTICLE XXVIII RENEGOTIATIONS

BECAUSE OF THEIR TEMPORARY NATURE, WE AGREE WITH MISSION

LIMITED OFFICIAL USE

LIMITED OFFICIAL USE

PAGE 02 STATE 153499

ASSESSMENT, REFTEL B, THAT ARTICLE XXV ONLY GATT CON-

SISTENT PROCEDURE TO JUSTIFY AUXILIARY DUTIES. MISSION GENEVA THEREFORE AUTHORIZED ADVISE INDIAN MISSION THAT GOI SHOULD SEEK WAIVER FOR TEMPORARY DUTIES. US WOULD BE WILLING SUPPORT WAIVER WHICH WOULD BE FOR TEMPORARY REPEAT TEMPORARY PERIOD (SUCH AS 120-180 DAYS) NEEDED TO HELP OVERCOME INFLATIONARY BUDGET DEFICIT. WAIVER SHOULD SPELL OUT SPECIAL CIRCUMSTANCES WHICH DICTATE NEED FOR DUTIES.

2. WE HAVE NOW RECEIVED GOI NOTIFICATION TO GATT (L/3874 AS WELL AS AD 1) REGARDING INDIAN TARIFF INCREASES OF BOUND RATES AND THE SUPPLEMENTARY TRADE INFORMATION AND THEIR READINESS TO START RENEGOTIATING IMPAIRED CONCESSIONS UNDER ARTICLE XXVIII IN ORDER TO MEET DEADLINE SET FORTH GATT L/3831 TO COMPLETE NEGOTIATIONS BY JUNE 30, 1974. SINCE LIST OF IMPAIRED CONCESSIONS HAS NOW BEEN RECEIVED AS WELL AS 3 YEARS INDIAN IMPORT DATA FOR ITEMS ON WHICH BOUND RATES HAVE BEEN INCREASED MISSION AUTHORIZED NOTIFY SECRETARIAT AND INDIAN GATT REP USG PREPARED BEGIN NEGOTIATIONS. IN THIS CONTEXT MISSION SHOULD RAISE WITH GOI ITS OFFER OF COMPENSATION. DOES GOI INTEND MAKE OFFER SOON? IF NOT WHEN MIGHT WE EXPECT SUCH OFFER? WOULD US REQUEST LIST LIKELY MOVE NEGOTIATIONS FURTHER ALONG?

3. INDIA'S STATEMENT ON ITS BALANCE OF PAYMENTS POSITION (BOP/137 OF JULY 6, 1973) DOES NOT MENTION RECENT EXTENSION OF EMBARGO LIST. MISSION GENEVA SHOULD SUGGEST TO SECRETARIAT THAT IN VIEW OF INDIA'S PRESENT BOP POSITION AND GOI'S PROPENSITY TO TAKE EVER INCREASING RESTRICTIVE TRADE MEASURES, US BELIEVES (A) FULL BOP CONSULTATIONS ARE IN ORDER AND (B) INDIA SHOULD SUBMIT COMPLETE LIST OF PROHIBITED ITEMS. WE STRONGLY ENDORSE EMBASSY NEW DELHI VIEWS CONTAINED REFTEL A AND AGREE AIM OF CONSULTATIONS SHOULD BE TO MAKE INDIA ESTABLISH RELATIONSHIP BETWEEN ITS BOP POSITION AND QUANTITATIVE RESTRICTIONS INCLUDING CONDITIONS UNDER WHICH RESTRICTIONS WILL BE RELAXED. BOP/137 INDICATES THAT INDIA'S BALANCE OF PAYMENTS IS UNDER STRAIN BECAUSE OF HEAVY DEBT SERVICING LIABILITIES, NEED LIMITED OFFICIAL USE

LIMITED OFFICIAL USE

PAGE 03 STATE 153499

TO IMPORT FOOD, REDUCED RECEIPTS, AND ANTICIPATED INCREASED DEMAND FOR IMPORTS OF MINERAL OILS, STEEL, FERTILIZERS, AND NON-FERROUS METALS. NEVERTHELESS, INTENSIFICATION AND/OR EXTENSION OF RESTRICTIONS, PARTICULARLY OF EMBARGOES, MERITS GATT SCRUTINY SO THAT ARTICLE XVIII MEASURES ARE NOT EXCESSIVE, DO NOT CONTRIBUTE TO AN UNECONOMIC EMPLOYMENT OF PRODUCTIVE RESOURCES, AND ARE NOT RESISTANT TO EVENTUAL RELAXATION. ACCORDING TO OUR RECORDS, INDIA CONSULTED WITH CONTRACTING PARTIES

UNDER ARTICLE XVIII IN NOVEMBER 1969 AND INDIA SUBMITTED DOCUMENTATION (BOP/119) IN 1971. MISSION REQUESTED DETERMINE WHETHER FORMAL CONSULTATIONS ACTUALLY HELD WITH INDIA IN 1971. IF SO, CITE APPROPRIATE GATT DOCUMENT.

4. NEW DELHI AND GENEVA: POSTS REQUESTED ASCERTAIN WHETHER INDIA JUSTIFIES EMBARGOES UNDER ARTICLE XII OR XVIII. IF ARTICLE XVIII, WHICH SECTION? GENEVA ALSO REQUESTED ASK SECRETARIAT REQUEST GOI SUBMIT TO GATT A CURRENT COMPREHENSIVE LIST OF ALL ITEMS UNDER EMBARGO.

5. WITH REGARD TO THE THREE TYPES OF JUSTIFICATIONS PROFFERED BY INDIA REPS TO COVER EMBARGOES (REF B), INDIA PRESENTLY CONSULTS WITH THE CONTRACTING PARTIES UNDER ARTICLE XVIII: 12(B) BUT NOT UNDER ARTICLE XII. PART IV OF THE GATT DOES NOT AUTHORIZE IMPOSITION OF EMBARGOES OR OTHER PROTECTIVE MEASURES BY DEVELOPING COUNTRIES. RATHER, PART IV DESIGNATES THE ACTIONS DEVELOPED COUNTRIES SHOULD TAKE TO PROVIDE ACCESS FOR AND ENCOURAGEMENT TO EXPORTS OF DEVELOPING COUNTRIES.

6. IF INDIA JUSTIFIES THE EMBARGOES UNDER ARTICLE XVIII, SECTION B, THE FOLLOWING PARAGRAPHS ARE PARTICULARLY RELEVANT. PARAGRAPH TEN PROVIDES THAT IN APPLYING RESTRICTIONS "THE CONTRACTING PARTY MAY DETERMINE THEIR INCIDENCE ON IMPORTS OF DIFFERENT PRODUCTS OR CLASSES OF PRODUCTS IN SUCH A WAY AS TO GIVE PRIORITY TO THE IMPORTATION OF THOSE PRODUCTS WHICH ARE MORE ESSENTIAL IN THE LIGHT OF ITS POLICY OF ECONOMIC DEVELOPMENT; PROVIDED THAT THE RESTRICTIONS ARE SO APPLIED AS TO AVOID UNNECESSARY DAMAGE TO THE COMMERCIAL OR ECONOMIC INTERESTS OF ANY OTHER CONTRACTING PARTY AND NOT TO PREVENT UNREASONABLY THE IMPORTATION OF ANY LIMITED OFFICIAL USE

LIMITED OFFICIAL USE

PAGE 04 STATE 153499

DESCRIPTION OF GOODS IN MINIMUM COMMERCIAL QUANTITIES THE EXCLUSION OF WHICH WOULD IMPAIR REGULAR CHANNELS OF TRADE..." ALTHOUGH GOI PERMITS IMPORTATION OF SOME QUANTITIES OF BANNED ITEMS BY PRIORITY INDUSTRIES WHEN THESE ITEMS ARE REQUIRED IN MANUFACTURING PROCESS (ACCORDING TO BOP/R/42, PARA 27), SUCH SELECTIVE RELAXATION OF EMBARGOES DOES NOT ALLOW MINIMAL IMPORTS OF ALL PROHIBITED ITEMS. IT MAY BE NOTED THAT THIS PARAGRAPH IS ESSENTIALLY THE SAME AS ARTICLE XII, PARAGRAPH 3 (B) AND (C).

7. PARAGRAPH 11 OF ARTICLE XVIII PROVIDES THAT "IN CARRYING OUT ITS DOMESTIC POLICIES, THE CONTRACTING PARTY CONCERNED SHALL PAY DUE REGARD TO...THE DESIRABILITY OF ASSURING AN ECONOMIC EMPLOYMENT OF

PRODUCTIVE RESOURCES". A SIMILAR ADMONITION APPEARS IN PARAGRAPH 3(A) OF ARTICLE XII. TO THE EXTENT THAT INDIA'S IMPORT RESTRICTIONS UNDER EITHER ARTICLE XVIII OR XII ARE ENCOURAGING HIGH-COST INEFFICIENT PRODUCTION PRIMARILY FOR THE PROTECTED DOMESTIC MARKET, AND IN PRODUCT AREAS HAVING ONLY MARGINAL DEVELOPMENTAL VALUE, THE RESTRICTIONS ARE CONTRIBUTING TO A MISALLOCATION OF PRODUCTIVE RESOURCES WHICH IS NOT ONLY COUNTER-PRODUCTIVE BUT TENDS ALSO TO BE SELF-PERPETUATING.

8. PARAGRAPH 12(A) OF ARTICLE XVIII PROVIDES THAT ANY CONTRACTING PARTY APPLYING NEW RESTRICTIONS OR RAISING THE GENERAL LEVEL OF ITS EXISTING RESTRICTIONS BY A SUBSTANTIAL INTENSIFICATION OF THE MEASURES APPLIED UNDER SECTION B SHALL CONSULT WITH CPS AS TO "THE NATURE OF ITS BOP DIFFICULTIES, ALTERNATIVE CORRECTIVE MEASURES WHICH MAY BE AVAILABLE, AND THE POSSIBLE EFFECT OF THE RESTRICTIONS ON THE ECONOMIES OF OTHER CONTRACTING PARTIES." THIS LANGUAGE IS THE SAME AS THAT IN ARTICLE XII, PARAGRAPH 4 (A). ALTERNATIVES TO PRESENT EMBARGOES COULD BE QUOTAS IF JUSTIFIED UNDER ARTICLE XVIII OR HIGHER TARIFFS AS LONG AS COMPENSATORY MEASURES ARE TAKEN FOR BREACH OF GATT BINDINGS.

9. WE CONSIDER IT UNNECESSARY THAT INDIA INVOKE ARTICLE XII WHEN INDIA ALREADY CONSULTS UNDER ARTICLE XVIII LIMITED OFFICIAL USE

LIMITED OFFICIAL USE

PAGE 05 STATE 153499

SECTION B, PROVIDED GOI PREPARED ENTER INTO FULL BOP CONSULTATIONS IN ACCORDANCE PARA 3 ABOVE. ARTICLE XVIII IS ESSENTIALLY SAME AS ARTICLE XII EXCEPT THAT XII REQUIRES ANNUAL CONSULTATIONS. HOWEVER, IT IS NOT FOR US TO PREJUDGE WHICH ARTICLE AND SECTION INDIAN PREFERS TO USE AS JUSTIFICATION.

10. EMBASSY NEW DELHI MAY INFORM GOI OF OUR VIEWS REGARDING WAIVER FOR TEMPORARY AUXILIARY DUTIES, ARTICLE XXVIII RENEGOTIATIONS, FULL BOP CONSULTATIONS, AND THAT US IS ASKING GATT SECRETARIAT TO REQUEST THAT GOI SUBMIT TO GATT COMPLETE LIST OF ITEMS UNDER EMBARGO.

DECON FOL AUG 3, 1974.
ROGERS

LIMITED OFFICIAL USE

NNN

Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: n/a
Control Number: n/a
Copy: SINGLE
Draft Date: 03 AUG 1973
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: morefirh
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1973STATE153499
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Film Number: n/a
From: STATE
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1973/newtext/t19730858/aaaabqmt.tel
Line Count: 216
Locator: TEXT ON-LINE
Office: ORIGIN COME
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 4
Previous Channel Indicators:
Previous Classification: LIMITED OFFICIAL USE
Previous Handling Restrictions: n/a
Reference: 73 A. NEW DELHI 8174; B. GENEVA 3234, ; C. NEW DELHI 7427;
Review Action: RELEASED, APPROVED
Review Authority: morefirh
Review Comment: n/a
Review Content Flags:
Review Date: 02 OCT 2001
Review Event:
Review Exemptions: n/a
Review History: RELEASED <02-Oct-2001 by eisnerah>; APPROVED <10-Jan-2002 by morefirh>
Review Markings:

Declassified/Released
US Department of State
EO Systematic Review
30 JUN 2005

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: INDIAN TRADE POLICY; AUXILIARY DUTIES, ARTICLE 28 NEGOTIATIONS, EMBARGOES/GATT BOP
TAGS: ETRD, IN, GATT
To: GENEVA NEW DELHI
Type: TE
Markings: Declassified/Released US Department of State EO Systematic Review 30 JUN 2005